

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Policies and Rules Implementing ) CC Docket No. 93-22  
the Telephone Disclosure and Dispute )  
Resolution Act )

DISPATCHED BY

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FCC MAIL SECTION

**ORDER ON RECONSIDERATION**  
**AND**  
**FURTHER NOTICE OF PROPOSED RULE MAKING**

Adopted: August 2, 1994

Released: August 31, 1994

By the Commission:

Comment Date: October 10, 1994

Reply Comment Date: October 31, 1994

**I. INTRODUCTION**

1. In this *Order on Reconsideration and Further Notice of Proposed Rule Making*, we affirm, with minor modifications, our regulations governing interstate pay-per-call<sup>1</sup> and similar services. Specifically, we clarify that information services excluded from the pay-per-call definition need not be offered exclusively through 900 numbers. We also require local exchange carriers (LECs) to file federal tariffs for their services enabling subscribers to block access to 900 numbers, and direct common carriers that bill subscribers for information services obtained through collect calls or presubscription arrangements to separate those charges from charges for telecommunications services. In addition, we propose to amend our regulations to give

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<sup>1</sup> Pay-per-call services (also commonly known as "900 services") provide telephone users a variety of recorded and interactive information programs for which charges exceeding normal tariffed transmission rates are assessed.

telephone subscribers greater protection from fraudulent and deceptive practices associated with the use of 800 numbers to provide information services.

## II. BACKGROUND

2. This proceeding was initiated to implement the Telephone Disclosure and Dispute Resolution Act (TDDRA).<sup>2</sup> The TDDRA charged both this Commission and the Federal Trade Commission (FTC) with adopting new rules to implement statutory requirements governing the provision of interstate pay-per-call and related services.<sup>3</sup>

3. On July 15, 1993, the Commission adopted a *Report and Order* amending our pay-per-call regulations consistent with the statutory mandate.<sup>4</sup> Four parties filed petitions for reconsideration of these rules. The parties participating in the reconsideration phase of this proceeding and the abbreviations used in this Order are listed in Appendix A.<sup>5</sup>

## III. DISCUSSION

### A. Definition of Pay-Per-Call Service

4. Explanation of the Issue: Section 64.1501 of the Commission's rules, 47 C.F.R. § 64.1501, establishes the scope of the Commission's pay-per-call regulations by adopting, virtually verbatim, the TDDRA's definition of the term "pay-per-call services," including the

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<sup>2</sup> *The Telephone Disclosure and Dispute Resolution Act of 1992*, which added Section 228 to the *Communications Act of 1934*, Pub. L. No. 102-556, 106 Stat. 4181 (1992)(codified at 47 U.S.C. § 228).

<sup>3</sup> Under the statute, the Commission's regulations impose obligations and constraints on common carriers that transmit or bill for such services, while the FTC's regulations have a broader scope, controlling the activities of information providers (IPs) that produce pay-per-call programs and other entities, including common carriers, that perform pay-per-call billing and collection.

<sup>4</sup> *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 93-22, 8 FCC Rcd 6885 (1993)(*Report and Order*).

<sup>5</sup> MCI, Pilgrim, SWBT and U S West filed Petitions for Reconsideration. U S West sought deferral of the November 1, 1993 effective date for certain pay-per-call billing requirements set forth in Section 64.1510. On October 29, 1993, the Commission released an order that deferred the effective date of Sections 64.1510(a)(2)(ii), (b) until January 1, 1994, and dismissed U S West's petition as moot. *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 93-22, *Order*, 9 FCC Rcd 2475 (1993). Accordingly, that petition and responsive pleadings are not addressed herein.

exemption of certain services or transactions from pay-per-call status.<sup>6</sup> Section 64.1506 of the Commission's rules, in turn, carries out the statutory imperative that the Commission designate "certain telephone number prefixes and area codes" that all interstate pay-per-call programs must use.<sup>7</sup> That rule requires all interstate services that meet the statutory definition of pay-per-call services to be placed on the 900 service access code. Pilgrim seeks reconsideration of the *Report and Order* on the grounds that Section 64.1506, as currently worded, does not specifically exclude from its requirements services that the TDDRA and Section 64.1501 exempt from the definition of pay-per-call services.

5. Positions of the Parties: Pilgrim suggests that the interplay between Sections 64.1501 and 64.1506 has the unintended result of requiring 900 numbers to be used for access to directory assistance and other information services that are expressly removed from the pay-per-call designation. Pilgrim states that such a result would be at odds with the TDDRA, other Part 64 rules, and the *Report and Order* in which those rules were adopted. Pilgrim thus asks that we amend the rules to clarify that the specific exclusions to pay-per-call status contained in Section 64.1501 be recognized in Section 64.1506.<sup>8</sup>

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<sup>6</sup> The rule currently defines "pay-per-call" service to be any service

- (1) In which any person provides or purports to provide
  - (i) Audio information or audio entertainment produced or packaged by such person;
  - (ii) Access to simultaneous voice conversation services; or
  - (iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;
- (2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to the charge for transmission of the call; and
- (3) Which is accessed through the use of a 900 number.

The rule further provides that directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service are not pay-per-call services.

The *Report and Order* and Code of Federal Regulations incorrectly designated this section as Section 64.1501(b)(1). As shown in Appendix B, we are correcting this error by designating the provisions as Section 64.1501(a)(4).

<sup>7</sup> 47 U.S.C. § 228(b)(5).

<sup>8</sup> Pilgrim Petition at 2. Although AT&T filed an opposition to Pilgrim's petition, it appears that AT&T misunderstands Pilgrim's request. The substance of AT&T's opposition actually supports Pilgrim's contention that 900 number access should not be required for directory assistance and other information services specifically excluded from pay-per-call status.

6. Decision: Section 64.1506 will be modified to clarify that the services specifically exempted from pay-per-call status by Section 64.1501 need not be offered exclusively on the 900 service access code. We did not intend for Section 64.1506 to negate the express exclusions from pay-per-call status enacted by Congress in the TDDRA and incorporated into our rules. Thus, we amend Section 64.1506 to require any interstate services possessing the basic pay-per-call attributes set forth in Section 64.1501(a)(1)-(2), *and not subject to the exclusions stated in that section*, to be offered only through telephone numbers beginning with the 900 service access code.

#### **B. Federal Tariffing for 900 Number Blocking Services**

7. Explanation of the Issue: LECs are required, where technically feasible, to offer telephone subscribers a reasonably priced, federally tariffed service by which access to 900 numbers is blocked.<sup>9</sup> SWBT, USTA and U S West oppose the federal tariffing requirement.

8. Positions of the Parties: SWBT, supported by USTA and U S West, seeks reconsideration of the federal tariffing requirement, noting that subscribers will naturally look to state tariffs to obtain 900 number blocking in conjunction with their local exchange service. Both SWBT and U S West contend that state tariffing has been effective and that mandatory federal tariffs constitute a "make work" project that will burden LECs and confuse customers without providing any benefits not already provided by a state tariffing system.<sup>10</sup> Moreover, SWBT questions whether ordinary residential and business end users interested in obtaining 900 number blocking would be entitled to purchase such services from the LECs' federal tariffs, which sell access services to the IXC.<sup>11</sup> SWBT requests that the Commission at least permit LECs to meet the federal tariffing requirement by simply referencing state general exchange tariffs.

9. AT&T opposes SWBT's petition, contending that it simply repeats arguments that were already raised and rejected in a previous phase of this proceeding. AT&T also asserts that SWBT has failed to show that LECs are actually and substantially burdened by the federal tariffing requirement. AT&T observes that a dual federal-state tariffing system has been required for international call blocking services despite similar objections from LECs.<sup>12</sup>

10. Decision: We will retain the federal tariffing requirement for 900 blocking services. The TDDRA imposes a clear mandate that blocking services be reasonably priced and we can ensure compliance with that requirement most effectively by requiring the filing of federal

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<sup>9</sup> 47 C.F.R. § 64.1508.

<sup>10</sup> SWBT Petition at 2; U S West Petition at 3.

<sup>11</sup> SWBT Reply at n. 3.

<sup>12</sup> AT&T Opposition at 5-6.

tariffs. Federal tariffs assure that this Commission need not review individual state tariffs or await subscriber complaints to ensure that 900 number blocking is offered to subscribers at a reasonable charge. LECs may not satisfy the federal tariffing requirement by cross-referencing state tariffs. Under such a system the Commission would be burdened with gathering and reviewing state tariffs if problems involving 900 number blocking arise.

11. No party supporting rescission of the federal tariffing requirement has attempted to quantify the costs of compliance or presented concrete evidence that any new billing and accounting procedures or internal training programs needed to effectuate federal tariffs would be unduly costly or complex. Moreover, despite SWBT's concern, business and residential subscribers are not precluded from obtaining 900 number blocking from federal access tariffs. As AT&T notes, LECs have already chosen to include non-access services in their federal access tariffs.<sup>13</sup> In addition, although LECs are free to include blocking provisions in federal access tariffs, they are not required to do so. Separate tariffs setting forth the terms and conditions of 900 number blocking may be filed with the Commission if LECs so desire.

### **C. Scope of Pay-Per-Call Billing Requirements**

12. Explanation of the Issue: Section 64.1510 of the Commission's rules, 47 C.F.R. § 64.1510, requires common carriers that include charges for pay-per-call and other information services on telephone bills to separate such charges from those associated with ordinary telecommunications services and to disclose certain information regarding consumers' rights and responsibilities. Section 64.1510(a) pertains to pay-per-call charges while Section 64.1510(b) involves information services falling outside the statutory definition of pay-per-call, *i.e.* information services provided to subscribers on a collect basis or under a presubscription or comparable arrangement.<sup>14</sup> Under Section 64.1510(a), carriers that assign pay-per-call numbers to IPs and also have contracts to bill telephone subscribers for such services must ensure that telephone bills including pay-per-call charges show the date, time, and duration of each pay-per-

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<sup>13</sup> International call blocking is available to call aggregators under federal access tariffs.

<sup>14</sup> Section 64.1501(b)(1) defines presubscription as a contractual agreement in which: (1) the service provider clearly and conspicuously informs a consumer of the terms and conditions under which the service is offered, including the rates to be charged and the service provider's name, address, and business telephone number through which additional information may be obtained or a complaint registered; (2) the service provider agrees to notify the consumer of any future rate changes; (3) the consumer agrees to use the service on the terms and conditions disclosed by the service provider; and (4) the service provider requires the use of an identification number (PIN) or other means to prevent unauthorized access to the service by non-subscribers. Use of a credit or charge card subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act constitutes a presubscription or comparable arrangement. 47 C.F.R. § 64.1501(c)(2).

call transaction separately from charges for local and long distance telephone services. In addition, those carriers must include with all bills assessing pay-per-call charges notification of various consumer rights and responsibilities, including the availability of 900 number blocking and the prohibition against disconnecting telephone service for failure to pay pay-per-call charges. Section 64.1510(b) requires all common carriers billing subscribers for collect or presubscribed information services to observe the separate billing and consumer notification requirements "to the extent possible." MCI seeks reconsideration of Section 64.1510(b) as it applies to information services obtained pursuant to a presubscription or comparable arrangement.

13. Positions of the Parties: MCI argues that Section 64.1510(b) goes beyond the express provisions of the TDDRA. MCI claims that extending the separate billing and consumer notice requirements applicable to pay-per-call services to cover presubscribed information services is at odds with both Congressional intent to exclude credit card and other presubscribed transactions involving 800 number information services<sup>15</sup> from the scope of pay-per-call regulation and the Commission's own decision not to require a preamble for 800 number information services. MCI further contends that the billing requirements are not necessary to advance the public interest and, in fact, impose unwarranted burdens and costs on common carriers because they must reconfigure billing procedures and statements, possibly adding an extra page to telephone bills.

14. Sprint, USTA, and U S West support MCI's petition.<sup>16</sup> Sprint notes the difficulty of separating collect information services calls from ordinary collect calls and also suggests that requiring separation of charges for information services provided under a presubscription arrangement was an "afterthought," imposed without identifying the public interest to be served.<sup>17</sup>

15. U S West asks that we clarify the obligation of carriers to segregate collect and presubscribed information service charges from ordinary telecommunications charges because our rule only requires separation "to the extent possible." U S West appears to be concerned

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<sup>15</sup> Information services charged to callers under presubscription or comparable arrangements may be offered through 800 numbers. See n. 28, *infra*.

<sup>16</sup> USTA, while supporting MCI's petition, suggests that the billing requirements contained in Section 64.1510(b) apply exclusively to IXCs like MCI and not to LECs. This is incorrect. Section 64.1510(b), by its terms, applies to "any common carrier offering billing and collection services to an entity providing interstate information services pursuant to a presubscription or comparable arrangement, or for interstate tariffed collect information services." This provision includes LECs that contract directly with IPs to bill for the identified services.

<sup>17</sup> Sprint Comments at 3.

that it cannot differentiate between an 800 number information services call billed under a presubscription arrangement and a remote access interexchange call.<sup>18</sup>

16. **Decision:** We will not rescind the requirement that common carriers billing subscribers for collect or presubscribed information services separate the charges for those services from the charges for ordinary telecommunications services, to the extent possible, and include in each bill assessing such charges a brief statement of subscriber rights and responsibilities. The parties correctly observe that these provisions are not required by the TDDRA. Section 64.1510(b), however, is not inconsistent or incompatible with the statute,<sup>19</sup> nor does the TDDRA restrict this Commission's ancillary jurisdiction under Title I of the Communications Act to impose additional regulations to protect consumers from fraudulent and deceptive practices associated with the provision of interstate information services.<sup>20</sup>

17. Under the TDDRA's regulatory framework, if interstate information services are offered under certain terms and conditions, they do not invoke the full panoply of consumer protections that govern services defined as pay-per-call. By adopting regulations that extend pay-per-call provisions to cover information services not within the statutory definition, we sought to minimize the potential for abuse associated with these services and to ensure that telephone subscribers who use or are billed for information services enjoy certain basic protections, regardless of the means by which those services are provided.<sup>21</sup> Although the TDDRA does not require the adoption of the specific requirements contained in Section

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<sup>18</sup> U S West Reply at 4.

<sup>19</sup> The Senate committee reporting on a predecessor pay-per-call bill specifically recognized that as the information services industry evolves, new and unforeseen regulations may be necessary to promote the public interest. See S. Rep. No. 102-190 at 12, 102nd Cong. 1st Sess., 137 Cong. Rec. (daily ed. Oct. 16, 1991). ("The Committee intends that the FCC and FTC have adequate flexibility in defining the scope of regulations to respond to new technologies and new applications which this legislation may not have anticipated, but which the agencies may determine need regulatory safeguards in order to protect consumers or [which they may determine] do not need regulatory safeguards.")

<sup>20</sup> See, e.g. *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

<sup>21</sup> Billing regulations are not the only provisions that the Commission determined should be extended to cover services outside the strict pay-per-call definition. Under our rules, common carriers may not disconnect local or long distance telephone service for failure to pay either disputed collect information services charges or charges for information services billed under a presubscription arrangement. 47 C.F.R. § 64.1507(b), (c). In addition, carriers that transmit collect or presubscribed information services must establish procedures for handling subscriber complaints regarding such services and forgo charges or make refunds when appropriate. 47 C.F.R. § 64.1511(a).

64.1510(b), it does not preclude us from exercising our Title I ancillary jurisdiction to provide that when charges for presubscribed information are included on a subscriber's telephone bill, the bill should contain notice to consumers of their rights. If carriers choose to bill for non-common carrier services, it is essential for recipients to be able to distinguish easily and understand the charges. The billing separation and disclosure requirements prescribed in Section 64.1510(b) are intended to ensure that consumers charged for information services on telephone bills are able to recognize those charges as unrelated to ordinary local or long distance charges and to challenge them without fear that basic telephone service might be jeopardized.

18. Subscriber complaints received by the Common Carrier Bureau over the past several months confirm and highlight the need to separate presubscribed information service charges from ordinary telephone charges and to educate consumers regarding their rights and responsibilities with respect to such services. These complaints indicate that common carriers are billing subscribers for information services obtained from IPs that have failed to establish a valid presubscription agreement with the subscriber of the originating telephone line. IPs providing services in this manner apparently read the Automatic Number Identification (ANI) of the originating telephone line and immediately issue a personal identification number (PIN) to a caller without ascertaining that that individual is both the subscriber to the originating line and legally capable of entering into a contractual agreement. The subscriber to the originating line is then charged for a call to the IP on the basis of ANI and, unless the bill segregates such charges, the subscriber to the originating line may not be aware that charges for information services have been billed.

19. This practice does not establish a legitimate presubscription arrangement. Unless an IP has ascertained that the subscriber to the originating line is, in fact, the caller who agreed to purchase information services under a valid presubscription or comparable arrangement, the IP may not use ANI in order to bill charges to the originating line. The threshold requirement for a presubscription arrangement is a "contractual agreement" between a consumer and an IP, and this agreement must be established before the call for which the charge is made. As the staff has noted, a caller cannot legally establish an arrangement that binds another party -- the subscriber to the originating line -- to terms and conditions unknown to and unaccepted by that party.<sup>22</sup> Because the basic terms of our presubscription definition preclude any use of ANI either to establish or to provide evidence of a valid presubscription or comparable arrangement, we did not believe it was necessary to include in our rules a specific prohibition against the use of ANI in billing for 800 number information services.<sup>23</sup> As noted above, it is clear that billing

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<sup>22</sup> Letter from Gregory A. Weiss, Acting Chief, Enforcement Division, Common Carrier Bureau to Randal R. Collett, Executive Vice President, Association of College and University Telecommunications Administrators, 9 FCC Rcd 2819 (1994).

<sup>23</sup> *Report and Order*, 8 FCC Rcd at 6891 n. 50. Apparently some parties have erroneously interpreted this footnote to mean that an IP may bill any information service call to the subscriber of the originating telephone. That practice is not lawful. Because charges



arrangements based on ANI are insufficient to ensure that presubscribed information services charges are being properly assessed because ANI identifies the subscriber to the originating line and not the caller who seeks to establish a presubscription arrangement. Accordingly, carriers billing for presubscribed information services should ensure that charges are assessed on the basis of ANI only if the subscriber, individually, has entered into a valid presubscription agreement to be billed for such calls.

20. In addition, carriers should also render bills that accurately reflect the charges assessed. Complaints before us now indicate that telephone bills for allegedly presubscribed information services do not typically show the telephone number actually dialed, usually an 800 number. Instead, an ordinary geographic area code number, or even a directory assistance number, is displayed as the terminating telephone number. Moreover, LECs often use other confusing and misleading language on their bills, such as misidentifying the call as a calling or credit card call, or an operator-assisted call. Billing subscribers in this way is unreasonable and we caution carriers that they may face sanctions if such practices continue.<sup>24</sup>

21. While we do not believe that the separation of charges and consumer rights notifications required under Section 64.1510(b), by themselves, adequately address the apparent abuse and evasion of our regulations described above, these requirements are clearly necessary to ensure that subscribers are at least able to identify charges for purportedly presubscribed information services. Accordingly, we hereby decline to eliminate Section 64.1510(b). Moreover, as discussed below, we are proposing to amend that section to make billing separation and notification requirements mandatory for presubscribed information services.<sup>25</sup> Notwithstanding U S West's reference to a need to negotiate with other carriers and redesign billing systems, we have no quantitative or other credible evidence to suggest that the separation of these charges is an especially onerous task. LECs that choose to bill for IPs offering presubscribed information services can, in their billing contracts, require the IP to identify all such calls. IPs should be able to segregate their presubscribed traffic since PIN access is required for all calls in which information services are provided pursuant to a presubscription arrangement. Moreover, IPs should be able to identify all 800 number traffic as presubscribed since charges cannot be assessed for information transmitted during a call to an 800 number if a valid presubscription arrangement has not been established. Finally, while IPs generally appear to have abandoned collect calls as a means of providing information services, LECs

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may be imposed only pursuant to a contractual presubscription agreement with a legally competent individual, billing through ANI is permissible only for calls originated by the subscriber after that subscriber has entered into an agreement.

<sup>24</sup> See 47 U.S.C. § 503(b).

<sup>25</sup> See ¶ 28, *infra*. We are also proposing additional billing requirements to ensure that subscribers are not improperly charged for purportedly presubscribed information services.

should include in their billing contracts a requirement that entities on whose behalf collect calls are billed take reasonable steps to segregate any collect calls for information services.<sup>26</sup>

22. We are amending Section 64.1510(b) to remove the requirement that carriers inform subscribers billed for collect or presubscribed information services that 900 number blocking is available upon request. We agree with MCI that this fact could confuse subscribers because 900 number blocking would not block collect calls or most presubscribed services, which are typically offered through 800 numbers. In addition, we are modifying slightly the terminology used in the rule to reflect more clearly the type of calls it was designed to cover. Specifically, we delete the term "interstate tariffed collect information services" and, instead, refer to "interstate information services provided on a collect basis." To ensure consistency, we also amend Sections 64.1507(c) and 64.1511(a)<sup>27</sup> to incorporate this changed terminology.

#### IV. FURTHER NOTICE OF PROPOSED RULE MAKING

23. The underlying purpose of both the TDDRA and the Commission's pay-per-call regulations is to protect consumers from fraudulent and abusive practices associated with information services. While the statute establishes a federal regulatory structure to advance this goal, it seeks at the same time to ensure that pay-per-call regulations do not stifle mutually beneficial business arrangements between IPs and their customers. This latter interest is evidenced by the exceptions to the statute's strict protective measures carved out for services provided under a presubscription or comparable arrangement.<sup>28</sup>

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<sup>26</sup> Although we are retaining provisions governing collect calls by IPs, it does not appear to be economically viable for IPs to place collect calls to consumers. Such calls could be billed only at the tariffed rate, and the IP would not be compensated for the calls unless it were affiliated with the carrier or received a commission or other payment for sending the calls. This would appear to be both illegal and an effort by the carrier to evade the requirements of the TDDRA that information services be placed on the 900 service access code.

<sup>27</sup> Section 64.1507(c) prohibits disconnection of basic telephone service for failure to pay disputed charges for "interstate tariffed collect information services." Section 64.1511(a) requires that carriers transmitting such services establish procedures for handling consumer complaints and forgiving charges.

<sup>28</sup> Moreover, while the TDDRA generally prohibits the use of 800 numbers to provide services for which callers are assessed charges, such use is permissible when callers to an 800 line either have a preexisting agreement that authorizes assessment of charges or pay for the transaction with a credit or charge card. 47 U.S.C. § 228(c)(6). We determined that the term "preexisting agreement" should be synonymous with "presubscription or comparable arrangement." *Report and Order*, 8 FCC Rcd at 6891. In addition, Section 64.1501(c)(2) specifically recognizes a credit card transaction as a presubscribed or comparable arrangement. Thus, for uniformity and simplicity, our 800

24. A key feature of this regulatory scheme is that all information services which meet the basic criteria of pay-per-call services must be provided on the 900 services access code, unless they are subject to a statutory exemption thereto. In implementing the requirements of the TDDRA, the Commission recognized that excluding presubscription arrangements from pay-per-call status would give IPs incentives to structure their services to fall within the exemption.<sup>29</sup> Our explicit definition of a presubscription or comparable arrangement<sup>30</sup> was intended to prevent IPs from being able instantly to "presubscribe" casual callers who had not received the basic information they would need to make informed choices or had not actually agreed to accept service on the terms offered. We specifically determined that a presubscription arrangement cannot be created during the course of a call for which information services charges are assessed, unless fees are charged to a credit or charge card.<sup>31</sup> While we declined to require written presubscription agreements, we noted that, in the event of a dispute, the IP would bear the burden of showing that a valid presubscription arrangement existed. We believed that this burden, along with the risk that an IP's transmission service could be terminated,<sup>32</sup> would effectively deter false presubscription claims.

25. Our experience over the past several months has caused us to question these assumptions and to conclude tentatively that our rules should be amended to give telephone subscribers greater protection with respect to information services offered through presubscription agreements.<sup>33</sup> We are particularly concerned about the use of 800 numbers to provide purportedly presubscribed information services. Complaints before us indicate that many telephone subscribers' monthly telephone bills include charges for information services provided over 800 numbers when the subscriber never entered into a presubscription

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number rule simply refers to presubscription or comparable arrangements. 47 C.F.R. § 64.1504(c).

<sup>29</sup> *Report and Order*, 8 FCC Rcd at 6887.

<sup>30</sup> See n. 14, *supra*. The definition is identical to that adopted by the FTC. See 16 C.F.R. § 308.2(e).

<sup>31</sup> 47 C.F.R. § 64.1501(c)(2).

<sup>32</sup> We mistakenly identified Section 64.1503 as the basis for termination. *Report and Order*, 8 FCC Rcd at 6888. That rule, however, would not apply since it only controls services defined as pay-per-call. Nonetheless, the tariffs under which interexchange carriers (IXCs) transmit 800 number traffic permit termination when service is not used in a lawful manner. See, e.g. AT&T Tariff FCC No. 2, Section 2.8.4 which, effective July 28, 1994, permits immediate termination rather than after 10 days notice.

<sup>33</sup> See ¶¶ 18-20, *supra*.

arrangement as defined by our rules.<sup>34</sup> We find the use of 800 numbers in this manner to be especially troubling because 800 numbers are widely perceived as being toll-free, a perception that Congress clearly sought to maintain in the TDDRA. Moreover, even if subscribers realize that charges may be incurred for some 800 number calls, there is no easy way for subscribers to protect themselves from such unwanted charges. The important blocking protection offered for 900 numbers is not practical for 800 numbers because it would compel subscribers to sacrifice access to toll-free 800 numbers to protect themselves from 800 number information services charges.<sup>35</sup>

26. LECs that bill for IPs offering presubscribed information services do so under contractual agreements with IPs. Although these agreements may require IPs to offer their services in a lawful manner, abuses are typically discovered from a pattern of subscriber complaints rather than oversight by the LECs. Satisfaction of a complaint, however, does not ensure that consumer interests have been adequately served. Telephone subscribers have a right not to be billed for services provided in violation of federal law or regulation and should not have the obligation, in the first instance, of determining whether prohibited charges are present on their monthly bills.

27. We therefore conclude that we must adopt more stringent requirements to control the circumstances under which valid presubscription arrangements are created and common carriers can transmit or bill for information services covered by these arrangements. We also are concerned that IPs may seek to use 800 numbers to provide access to international or other

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<sup>34</sup> During the period from January 1, 1994 through June 30, 1994, the Informal Complaints and Public Inquiries Branch received 2003 written complaints regarding 800 number information services. Many of these complaints assert that children have unrestricted access to adult-oriented programs.

<sup>35</sup> Even if 800 number blocking were deemed desirable, certain subscribers may not lawfully block such lines. Call aggregators, such as hotels and payphone owners, must maintain 800 number access to comply with our rules governing operator service providers.

information services which may not fall strictly within the statutory definition of pay-per-call.<sup>36</sup> Thus, we propose to amend our rules as explained below and set forth in Appendix C.

28. We propose to amend Section 64.1504<sup>37</sup> of our rules to state explicitly, as we clarified in paragraph 19, *supra*, that the section protects not only callers to 800 numbers, but also subscribers whose telephone lines may be used to place calls to 800 number information services. We also propose to amend Section 64.1504(b) to state that 800 numbers may not be used to connect callers to any information service that is not provided under a presubscription or comparable arrangement, even though such calls already may be prohibited under Section 64.1504(a). IPs and carriers would thus be prohibited explicitly from transferring callers to 800 numbers to any information service, not simply those defined as pay-per-call that are offered on 900 numbers. This prohibition on the use of 800 numbers is consistent with the statutory purposes of shielding consumers from deceptive practices and maintaining the public expectation that 800 numbers will be toll-free.

29. We also propose to modify the definition of a presubscription or comparable arrangement contained in Section 64.1501(b) to require that such arrangements be established only with a legally competent individual and executed in writing, unless charges are authorized to a credit or charge card generally accepted for the purchase of consumer goods, entertainment, travel, and lodging. This would prevent IPs from creating instant "presubscription" by immediately issuing to a caller either a PIN or a "credit" card that is billed on a monthly telephone bill and usable for purchasing information services from the particular IP. In addition, we propose to amend Section 64.1510(b) to prohibit common carriers from billing subscribers for presubscribed information services without evidence of the written agreement. The amendment would also require carriers to address bills assessing presubscribed information

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<sup>36</sup> Some IPs offer their programs over directly-dialed international telephone numbers. These services are charged in the same way as basic telephone services, not as information services. Thus, charges are assessed at the tariffed rate applicable to all telephone calls to the particular foreign location. Because charges do not exceed the tariffed rate, international information services do not fall within the statutory definition of pay-per-call services and, consequently, are not subject to federal regulations governing pay-per-call services. In addition, because only tariffed rates are charged, common carriers may be unable to distinguish calls to international information services from any other international calls. This constraint limits the extent to which international information services can be controlled by the common carriers that, in many instances, unwittingly, transmit them.

<sup>37</sup> This section codifies the TDDRA's prohibitions against the use of 800 numbers to (1) initiate collect information services calls; (2) connect callers to pay-per-call services; (3) charge callers upon completion of an 800 number call or for any information conveyed during a call to an 800 number unless the caller has established a presubscription arrangement permitting assessment of charges.

services charges only to the individual who entered into the presubscription agreement. Finally, carriers performing billing services for IPs would be required, without exception, to separate charges for presubscribed information services from charges for telecommunications services and to display for each information service charge: (1) the type of service and the service provider's name and business telephone number; (2) the telephone number actually called; (3) the amount of the charge; (4) the date and time of the call, and, for calls billed on a time-sensitive basis, the duration of the call.<sup>38</sup>

30. We recognize that these proposals would impose new burdens on both common carriers and IPs that have not engaged in the abuses described above. Nonetheless, we tentatively conclude that these burdens are outweighed by the need to protect subscribers from bills for services they neither sought nor received. Since IPs are not directly controlled by our regulations,<sup>39</sup> we must seek to curb abusive practices by imposing obligations on common carriers that transmit or bill their services. In light of the significant abuses occurring in information services provided over 800 numbers, we tentatively conclude that the amendments to our rules outlined above and set forth in Appendix C will reasonably and effectively protect consumers from unlawful charges.

31. We invite parties to comment on our proposals to amend Sections 64.1501(c), 64.1504, and 64.1510. We encourage parties opposing these proposals to identify and quantify, with specificity, any expected burdens and to describe alternative means of protecting consumers from deceptive practices involving information services offered under presubscription agreements, especially those using 800 numbers.<sup>40</sup> We urge commenters to consider whether the proposed rules adequately guard against deception and evasion by IPs, particularly when an IP and common carrier are commonly owned or have close business ties. For instance, commenters may wish to discuss whether the statutory prohibitions on the use of 800 numbers contained in Section 64.1504 should be expanded to prohibit immediate activation of "credit"

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<sup>38</sup> Because of the substantial abuses in this area, we plan to make the new billing requirements effective 30 days after publication of the final rule in the Federal Register. Carriers billing for presubscribed information service calls should anticipate the possibility that they will need to make changes to their billing systems in order to comply with that rule.

<sup>39</sup> See n. 3, *supra*.

<sup>40</sup> For example, we invite parties to discuss whether IXCs should be required to obtain evidence that presubscription arrangements have been properly executed before transmitting 800 number information services, or whether all presubscribed services should be billed only to a credit card.

or "calling" cards issued to 800 number callers.<sup>41</sup> We invite commenters to suggest additional regulations that will protect consumers without unduly burdening legitimate IPs and common carriers.

## **V. PROCEDURAL MATTERS**

### **A. *Ex Parte* Rules -- Non-Restricted Proceeding**

32. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

### **B. Regulatory Flexibility Analysis**

33. Reason for action. The Commission is issuing this *Further Notice of Proposed Rule Making* to ensure that telephone subscribers are adequately protected from deceptive and fraudulent practices associated with the provision of information services through 800 numbers and pursuant to a presubscription or comparable arrangement.

34. Objectives. The objective of this *Further Notice of Proposed Rule Making* is to solicit comment on proposed rules related to the provision of information services available through 800 numbers and pursuant to a presubscription or comparable arrangement.

35. Legal Basis. Sections 1, 4(i), 4(j), 201-205, 218 and 228 of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 154(j), 201-205, 218 and 228.

36. Description, potential impact, and number of small entities affected. The proposed rules will impose specific constraints on common carriers that bill subscribers for interstate information services offered pursuant to presubscription arrangements and, indirectly, on IPs that offer such services. Some small entities may feel some economic impact due to the proposed requirement that presubscription arrangements be executed in writing.

37. Reporting, recordkeeping, and other compliance requirements. The proposed rules require that common carriers obtain evidence of a written presubscription arrangement prior to billing subscribers for information services provided in that manner.

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<sup>41</sup> Complaints filed with the Commission indicate that some common carriers may be offering 800 number callers telephone company calling cards which are used primarily, if not exclusively, to reach information services. Immediate activation of such cards appears to be a clear evasion of the TDDRA's apparent intent that 800 numbers not be used to provide instantaneous access to information services.

38. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. We shall consider any alternatives suggested in comments that will afford telephone subscribers effective protection from abusive practices involving information services offered through 800 numbers and pursuant to a presubscription or comparable arrangement.

## VI. CONCLUSION

39. In this *Order on Reconsideration and Further Notice of Proposed Rule Making*, we amend our rules to clarify that those interstate information services specifically exempted from pay-per-call status need not be offered exclusively on 900 numbers. We decline to reconsider requirements that: (1) LECs file federal tariffs for their services that block subscriber access to 900 numbers; and (2) any charges for collect or presubscribed information services included on a telephone bill must be separated from charges for telecommunications services to the extent possible. We also seek comment on proposals intended to protect telephone subscribers from abusive practices associated with the provision of information services through 800 numbers and pursuant to a presubscription or comparable arrangement.

## VII. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 228, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 228, and 405, that the petitions for reconsideration filed in this proceeding ARE DENIED, except as provided in this Order.

41. IT IS FURTHER ORDERED, that Part 64 of the Communications rules, 47 C.F.R. Part 64, IS AMENDED as set forth in Appendix B, effective 30 days from publication of the text of that rule in the *Federal Register*.

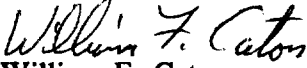
42. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 228, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 228, and 405, that a *Further Notice of Proposed Rule Making* IS ISSUED, proposing amendment of 47 C.F.R. Part 64 as set forth in Appendix C.

43. IT IS FURTHER ORDERED, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. § 1.415, 1.419, that all interested parties may file comments on the matters discussed in this *Further Notice of Proposed Rule Making* and on the proposed rules contained in Appendix C by October 10, 1994. Reply comments are due October 31, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC



Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street,  
N.W., Washington, D.C. 20554.

**FEDERAL COMMUNICATIONS COMMISSION**

  
**William F. Caton**  
Acting Secretary

## **APPENDIX A**

### **LIST OF COMMENTERS RECONSIDERATION PROCEEDING**

#### **Petitions for Reconsideration**

MCI Telecommunications Corporation	MCI
Pilgrim Telephone, Inc.	Pilgrim
Southwestern Bell Telephone Company	SWBT
U S West Communications, Inc.	U S West

#### **Comments/Oppositions**

American Telephone and Telegraph Company	AT&T
MCI	
Sprint Communications Company L.P.	Sprint
United State Telephone Association	USTA

#### **Replies**

MCI  
SWBT  
U S West  
USTA

## **APPENDIX B**

### **RULES AMENDED**

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

**AUTHORITY:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228 unless otherwise noted.

Subpart O--Interstate Pay-Per-Call and 800 Services

2. Section 64.1501 is revised to read as follows:

(a) Pay-per-call service means any service

- (1) In which any person provides or purports to provide

- (i) Audio information or audio entertainment produced or packaged by such person;

- (ii) Access to simultaneous voice conversation services; or

- (iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

- (2) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

- (3) Which is accessed through use of a 900 number;

- (4) Provided, however, such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(b) Presubscription or comparable arrangement means a contractual agreement in which:

- (1) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

- (2) The service provider agrees to notify the consumer of any future rate changes;
- (3) The consumer agrees to use the service on the terms and conditions disclosed by the service provider; and
- (4) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers;
- (5) Provided, however, that disclosure of a credit or charge card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. 1601 et seq. No other action taken by a consumer during the course of a call to an information service, for which charges are assessed, can create a presubscription or comparable arrangement.

3. Section 64.1506 is revised to read as follows:

Any interstate service described in § 64.1501(a)(1)-(2), and not subject to the exclusions contained in § 64.1501(a)(4), shall be offered only through telephone numbers beginning with a 900 service access code.

4. In Section 64.1510, paragraph (b) is revised to read as follows:

\* \* \* \* \*

(b) Any common carrier offering billing and collection services to an entity providing interstate information services pursuant to a presubscription or comparable arrangement, or on a collect basis, shall, to the extent possible, display the billing information in the manner described in paragraphs (a)(2)(i)(A), (B), (D) and (a)(2)(ii) of this section.

5. In Section 64.1507, the introductory text is republished and paragraph (c) is revised to read as follows:

No common carrier shall disconnect or interrupt in any manner, or order the disconnection or interruption of, a telephone subscriber's local exchange or long distances telephone service as a result of that subscriber's failure to pay:

\* \* \* \* \*

(c) Charges for interstate information services provided on a collect basis which have been disputed by the subscriber.

6. In Section 64.1511, the first sentence of paragraph (a) is revised to read as follows:

(a) Any carrier assigning a telephone number to a provider of interstate pay-per-call services or providing transmission for interstate information services provided pursuant to a presubscription or comparable arrangement or on a collect basis, and providing billing and collection for such services, shall establish procedures for the handling of subscriber complaints regarding charges for those services. \* \* \*

\* \* \* \* \*

## APPENDIX C

### PROPOSED RULES

Part 64 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 64 to continues to read as follows:

**AUTHORITY:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228 unless otherwise noted.

Subpart O--Interstate Pay-Per-Call and 800 Services

2. In § 64.1501, the introductory text of paragraph (b) is revised, paragraphs (b)(1), (2), (3), and (4) are republished, and paragraph (b)(5) is revised to read as follows:

\* \* \* \* \*

(b) Presubscription or comparable arrangement means a contractual agreement, executed in writing with a legally competent individual, in which

(1) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(2) The service provider agrees to notify the consumer of any future rate changes;

(3) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(4) The service provider requires use of an identification number or other means to prevent unauthorized access to the service by non-subscribers;

(5) Provided, however, that disclosure of a credit or charge card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if the credit or charge card is both:

(i) generally available for the purchase of consumer goods, entertainment, travel, and lodging, and

(ii) subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. § 1601 et seq.

3. In § 64.1504, the introductory text and paragraph (a) is republished and paragraphs (b), (c), and (d) are revised to read as follows:

Common carriers shall prohibit, by contract or tariff, the use of any telephone number beginning with an 800 service access code, or any other telephone number advertised or widely understood to be toll free, in a manner that would result in

(a) The calling party or the subscriber to the originating line being assessed by virtue of completing the call, a charge for the call;

(b) The calling party being connected to a pay-per-call service or any other information service that is not provided in accordance with paragraph (c) of this section;

(c) The calling party or the subscriber to the originating line being charged for information conveyed during the call except pursuant to a presubscription or comparable arrangement between the information provider and the party charged;

(d) The calling party or the subscriber to the originating line being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

4. In § 64.1510, paragraph (b) is revised and new paragraph (c) is added to read as follows:

\* \* \* \* \*

(b) Any common carrier offering billing and collection services to an entity providing interstate information services pursuant to a presubscription or comparable arrangement shall

(1) Bill for such services only after obtaining evidence that a presubscription or comparable arrangement has been established in accordance with § 64.1501(b) with the person being billed, and address the bill to that person;

(2) In any billing that includes charges for any interstate information services provided pursuant to a presubscription or comparable arrangement

(i) Include a statement indicating that:

(A) Such charges are for non-communications services;

(B) Neither local nor long distance services can be disconnected for non-payment although an information provider may employ private entities to seek to collect such charges; and

**(C) Access to information services may be involuntarily blocked for failure to pay legitimate charges;**

**(ii) Display any charges for information services obtained pursuant to a presubscription or comparable arrangement in a part of the bill that is identified as not being related to local and long distance telephone charges; and**

**(iii) Specify, for each presubscribed information service charge made, the type of service; the name and business telephone number of the service provider; the amount of the charge; the telephone number actually dialed; and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call.**

**(c) Any common carrier offering billing and collection services for interstate information services provided on a collect basis shall, to the extent possible, display billing information in the manner described in paragraph (b)(2) of this section.**